



REPUBLIC OF KENYA



**Hb International Group, Inc & another v Waldo Enterprises Co Ltd (Civil Case E508 of 2020) [2025] KEHC 9356 (KLR) (Commercial and Tax) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9356 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E508 OF 2020**

**F GIKONYO, J**

**JUNE 23, 2025**

**BETWEEN**

**HB INTERNATIONAL GROUP, INC ..... 1<sup>ST</sup> PLAINTIFF**

**HB INTERNATIONAL FZE ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**WALDO ENTERPRISES CO LTD ..... DEFENDANT**

**RULING**

1. The defendant's notice of motion dated 27<sup>th</sup> January 2025, seeks; i) an order directing the plaintiffs to deposit Kshs. 20,000,000/-; and ii) that the suit be dismissed if they fail to comply. The application is expressed to be brought under Orders 51 and 26 Rule 1 of the Civil Procedure Rules.
2. The application is supported by the annexed affidavit sworn by Mr. Ismael Jasro Duba (Mr. Duba) on 27<sup>th</sup> January 2025 and written submissions dated 31<sup>st</sup> December 2025.

**Background**

3. The plaintiffs' claim stems from a business arrangement between them and the defendant company for the supply of cooking oil from Malaysia to Kenya for local consumption. According to the defendant's director, Mr. Duba, the first two consignments were successfully delivered and paid for. The request for the third consignment was paid for. However, as soon as they were released from the shipper, they were confiscated by Government authorities because the edible oils were of substandard quality, lacked mandatory essential vitamins. They were subjected to tests by the Kenya Bureau of Standards (KEBS) and all goods failed, deemed unfit for human consumption and were publicly condemned.
4. Mr. Duba indicated that the plaintiffs' point man in the deal, Mr. Hemed Minhaj Rahman, introduced himself to him as the director of Knights Bridge Holding. He was introduced to Mr. Duba by Mr.



Adam Liban, a partner in the venture, through his son. It later emerged, upon due diligence, that Mr. Hemedi did not own a refinery and that he was a middleman moving from country to country trying to supply substandard goods. Mr. Hemedi is at large and has never visited the country upon catching wind that the DCI needed him to record a statement in relation to the condemned goods and those that disappeared at the port.

## Grounds

5. Against this backdrop, the defendant brought this application on the grounds that:-
  1. the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs are foreign entities registered in the United States of America and United Arab Emirates respectively.
  2. The said plaintiffs are briefcase companies or special vehicle companies with no known directors, employees or staff both abroad and locally.
  3. The director, sales, point man or middleman named Hemed Minhaj Rahman has no known place of residence. He keeps moving from one country to another with various passports from Mexico, Malaysia, America, Arabia and Russia.
  4. The amount sought by the plaintiff was already paid. The remaining goods were apprehended at the Port of Mombasa for not being fit for human consumption. They were condemned and destroyed by the Kenya Bureau of Standards in 2018.
  5. The said agreement by one of the proxy companies, known as Knight Bridge, is now dissolved.
  6. The defendant has a strong case against the plaintiffs and is apprehensive that if successful, the plaintiffs would not be able to compensate it in terms of damages and other costs incurred in defending the suit.
6. The defendant submitted that since it has never heard from Mr. Minhaj, it believes that the plaintiffs are not interested in pursuing this matter anymore. It also submitted that though initially, it had sought, in its earlier application dated 23<sup>rd</sup> June 2021, that the plaintiff deposit the amount claimed of USD 1,895,256/-, the Kshs. 20,000,000/- presently sought is sufficient.
7. The defendant relied on:-
  1. Patrick Ngetakimanzi v Marcus Mutuamuluvi & 2 others (High Court Election Petition No. 8 of 2013)
  2. Garsu Pasaulis, UAB v Systemedia Technologies Limited (Civil Appeal E034 of 2021) [2022] KEHC 298 (KLR) (Commercial and Tax) (28 April 2022) (Ruling)

## Response

8. The plaintiffs filed a replying affidavit sworn by Mr. Hamed Rahman Minhaj, on 17<sup>th</sup> September 2021 in response to the defendant's earlier withdrawn application of 23<sup>rd</sup> June 2021. The court directed that this replying affidavit be deemed as a response to the present application.
9. It was deposed that the plaintiffs and the defendant entered into the sale contracts dated 26<sup>th</sup> March 2018, 13<sup>th</sup> April 2018 and 24<sup>th</sup> May 2018. Despite the delivery of cooking oil in compliance with the contracts, the defendant refused to pay USD. 1,895,256, leading to the instant suit.
10. It was further deposed that the goods were never confiscated at the Mombasa Port; that the goods did not lack Vitamin A nor were they expired, and were therefore fit for human consumption.



11. The plaintiffs submitted that the defendant has not made any effort to show how the suit is frivolous. They contended that the present application is an exercise to defeat justice. They highlighted that the timing of the present application was at the point when the matter was meant to be certified ready for hearing. That the suit has stayed unprosecuted with no action from the defendant until the file was reconstructed after numerous attempts to trace it failed. It was upon reconstruction that the defendant withdrew the previous application to file the current one.
12. The plaintiffs also submitted that the mere fact that a party is not registered in the court's jurisdiction or has no known assets is not sufficient to grant the orders sought because other factors need to be considered. That whereas it is not disputed that the plaintiffs are registered abroad, the defendant has not shown how they will be unable to pay costs if any and by stating that the plaint is frivolous and in bad faith, the defendant is only pre-empting the outcome of a suit yet to be heard.
13. The plaintiffs relied on:-
  1. Jayesh Hasmukh Shah v Navin Haria & another [2015] eKLR
  2. Aggrey Shivona v Standard Group PLC [2020] eKLR
  3. Scotch Whisky Association & 2 others v Africa Spirits Limited [2020] eKLR

### **Mention**

14. When the matter came up before the court on 28<sup>th</sup> January 2025, Mr. Salim for the plaintiffs intimated that the court issued an order for the provision of security for costs in a related file and that the plaintiffs propose to deposit Kshs. 500,000/- as security.
15. Mr. Obuni asserted that the defendant proposes Kshs. 20,000,000/- as security.
16. Mr. Salim also prayed for costs for the withdrawn application. The court directed the parties to file written submissions on costs. However, on 19<sup>th</sup> March 2025, Mr. Salim stated that he did not find it necessary to file submissions on costs.

### **Analysis and Determination**

17. The issue for determination is whether the defendant has met the threshold for the grant of an order for security for costs.
18. Order 26 Rule 1 of the Civil Procedure Rules provides that in any suit, the court may order that security for the whole or any part of the costs of any defendant.
19. The court's power is discretionary and ought to be exercised on principles, not on a whim. Through the present application, the court is being asked to exercise its discretion in favour of the defendant. It is for this reason that the Court of Appeal observed in *Shah v Shah* [1982] KLR 95, that:-

“The test on an application for security for costs is not whether the plaintiff has a prima facie case but whether the defendant has shown a bona fide defence.”
20. The Court of Appeal in *Westmont Holdings SDN. BHD v Central Bank of Kenya* [2017] KECA 108 (KLR) delineated the principles for considerations, as follows:-
  1. The court has a complete discretion whether to order security, and accordingly it will act in the light of all the relevant circumstances.



2. The possibility or probability that the plaintiff company will be deterred from pursuing its claim by an order for security is not without a more sufficient reason for not ordering security. It is implicit that a company may have difficulty meeting an order.
  3. The court must balance the injustice to the plaintiff prevented from pursuing a proper claim against the injustice to the defendant if no security is ordered and at the trial the plaintiff's claim fails and the defendant finds himself unable to recover his costs. The power must neither be used for oppression by stifling a claim particularly when the failure to meet that claim might in itself have been a material cause of the plaintiff's impecuniosity, nor as a weapon for the impecunious company to put pressure on a more prosperous company.
  4. The court will look to the prospects of success, but not go into the merits in detail.
  5. In setting the amount it can order any amount up to the full amount claimed by way of security, provided that it is more than a simply nominal amount; it is not bound to make an order of a substantial amount.
  6. Before refusing security the court must be satisfied that, in all the circumstances, the claim would be stifled. This might be inferred without direct evidence, but the court should also allow that external resources might be available.
  7. The lateness of the application can properly be taken into account.”
21. The circumstances of this case are peculiar in that the defendant initially filed a similar application for security for costs on 23<sup>rd</sup> June 2021. However, the file was misplaced. The file was later reconstructed after the defendant withdrew its earlier application and filed the present one.
  22. The plaintiffs argued that the defendant has not shown how they will be unable to pay costs. The plaintiffs are foreign entities with no assets within the court's jurisdiction. This is not disputed. This is a proper ground for the grant of an order for security.
  23. Although there is a delay in filing of the application, the misplacement of the file and its reconstruction is a sufficient reason for the delay. There is no proof that the file had been misplaced by the defendant.
  24. However, it appears from the averments of the parties that this is a case involving a grave public health concern. On one hand, it was deposed that the goods were confiscated and destroyed for they were not fit for human consumption. On the other hand, it was stated that the goods were never confiscated at the Mombasa Port; that the goods did not lack Vitamin A nor were they expired, and were therefore fit for human consumption.
  25. The goods were edible oils for human consumption.
  26. The claim arises from the circumstances stated above. It is a matter where the DCI are involved. The plaintiffs are said to be foreign companies with no known assets within the jurisdiction of Kenya. There is need for security for costs. But to what extent or amount?
  27. The defendant sought Kshs. 20,000,000/- as security. The plaintiffs proposed to deposit Kshs. 500,000/-.
  28. The court has discretion to order “any amount up to the full amount claimed by way of security”. However, the discretion is exercised upon the circumstances of each case keeping to what is reasonable to secure any costs that may become payable by the plaintiff, but without necessarily punishing the plaintiff.



29. In light of the circumstances of this case, and the claim being of a huge sum of money- USD 1,895,256/- equivalent to about Kshs. 244,867,075.20 today- a security of Kshs. 20,000,000 is reasonable.
30. The plaintiffs' counsel elected not to file any submissions on the costs of the withdrawn application. Therefore, that issue falls by the wayside.

### **Disposal**

31. In the upshot, the court finds that the defendant's application dated 27<sup>th</sup> January 2025 is allowed, in the following terms:-
  1. The plaintiffs to deposit Kshs. 20,000,000/- in an interest earning account in the joint names of the parties' respective advocates within thirty (30) days from the date of this ruling.
  2. Costs of this application are awarded to the defendant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT ONLINE APPLICATION THIS 23<sup>RD</sup> DAY OF JUNE, 2025**

.....

**F. GIKONYO M**

**JUDGE**

In the presence of: -

Salim for Plaintiffs

Obuli for defendant

CA Kinyua

